

REMARKS

The Examiner's Office Action mailed August 18, 2008, which rejected all pending claims, has been reviewed. Applicants gratefully acknowledge that the double patenting rejection has been withdrawn. Reconsideration of the remaining rejection in view of the foregoing remarks is respectfully requested. Moreover, Applicants have reviewed the Office Action of August 18, 2008, and submit that the following Remarks are responsive to all points raised therein. Applicants believe that currently pending claims 8-12 are now in form for allowance.

Status of Claims

Claims 8-12 are pending in the application. Claim 10 has been amended to correct an improper dependency. No new matter has been added.

Rejection of Claims 8-12 under 35 USC § 102(b)

Reconsideration is requested of the rejection of claims 8-12 under §102(b) as being unpatentable over Arther (US Patent Publication No. 20020103233).

According to Section 102(b) a person shall be entitled to an invention unless the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

In this case the Arther application was published on August 1, 2002. The present invention was filed in on Oct. 9, 2003, however, it claims priority to the PCT (designated the US, has the same specification as the present application – the only difference is that the present application is an English translation of the PCT- and the US application was filed during the pendency of the PCT) filed on April 2, 2002 (a petition for delayed priority was granted by the Office of Petition on October 8, 2008). As such, Applicants submit that the Arther application would not be prior art to the present application under 35 USC § 102(b) as it was filed prior to the Arther application.

For all the reasons stated above, Arther does not anticipate claim 8.
Claims 9-12 depend directly or indirectly from claim 8 and as such are patentable over Arther.

Conclusion

In view of the above, Applicants respectfully submit that the pending claims are novel and not obvious over the cited reference and request withdrawal of all rejections and allowance of the claims.

The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment in connection with this amendment to Deposit Account No. 50-4260.

Respectfully submitted,
/JESSICA MONACHELLO/
Jessica Monachello
Reg. No. 58,015
BAYER HEALTHCARE LLC
P.O. Box 390
Shawnee Mission, KS 66201
Tel: 913-268-2038
Fax: 913-268-2889